



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 205

[Docket No. 2020-1]

Email Rule for Statutory Litigation Notices

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule amending its procedures for submitting notices to the Office pursuant to sections 411 and 508 of the Copyright Act. Previously, these notices were submitted by mail to two different addresses, which risked delays and caused unnecessary burdens for both submitters and the Office. The new rule will alleviate these issues by requiring these notices to be submitted by email.

DATES: Effective [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jordana Rubel, Assistant General Counsel, by email at jrubel@copyright.gov or John R. Riley, Assistant General Counsel, by email at [jrill@copyright.gov](mailto:jril@copyright.gov); either can be reached by telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION:

1. Background

Under sections 411 and 508 of the Copyright Act,¹ certain parties are required to notify the Register of Copyrights about copyright litigation. Sections 411(a) and 411(b) each define circumstances in which the Register of Copyrights must be notified of civil

¹ 17 U.S.C. 411, 508.

copyright lawsuits, to provide opportunity for he or she to participate in the case. Section 411(a) provides that copyright claimants who were denied registration by the Copyright Office for a specific work must inform the Register when they initiate a lawsuit alleging infringement of that work so that the Register may elect to become a party to the civil action with respect to the issue of registrability of the copyright for the work. Section 411(b) provides that if a party in a copyright infringement lawsuit alleges that a certificate of registration issued by the Copyright Office contains inaccurate information that was knowingly included in the application, then the court shall ask the Register to advise whether, if the Register had known of that inaccuracy, he or she would have refused registration.

Section 508 of the Copyright Act requires the clerks of the courts of the United States to notify the Copyright Office of the names and addresses of the parties and the title, author, and registration number of each work involved in any action under title 17. The clerks must also, within one month after any final order or judgment is issued in such a case, send the Office a copy of the order or judgment and any written opinion. Once received, the Office must make these documents part of its public records.

Currently, the Office does not have detailed regulations governing the submission of section 411(b) or 508 notices; the applicable regulation currently indicates that such submissions should be addressed to a post office box rather than the main Copyright Office mailing address.² The Office has a regulation specifically governing section 411(a) notifications, which indicates that such documents must be sent by “registered or certified mail to the General Counsel of the Copyright Office” or delivered by hand.³

² 37 CFR 201.1(c)(1).

³ *Id.* at 205.13.

The Office recognizes that litigants and court clerks who must file these required statutory notices would benefit from a rule that requires electronically submitted documents and that would allow court clerks to send the required notifications through the federal courts' Case Management/Electronic Case Files system. Further, the Office would benefit from streamlined delivery of these notices, as it can be difficult to predict how long it will take for a mailed notice to actually be received, particularly given delays due to security screening.⁴

While a much smaller number of section 411(a) and (b) notices are received, the Office receives thousands of section 508 notices each year. The Administrative Office of the U.S. Courts created form AO-121, "Report on the Filing or Determination of an Action or Appeal Regarding a Copyright" to assist court clerks in complying with their statutory duties under 17 U.S.C. 508.⁵ This form is provided to court clerks in Portable Document Format ("PDF") and includes blank spaces in which court clerks can provide parties' names and addresses and the titles, authors, and registration numbers of works at issue in the case. In the Office's experience, some court clerks do not fill in any or all of the blanks on the forms they send to the Office and instead merely append a copy of the complaint to a blank form. The attached complaints, which can be lengthy, are not themselves required to be submitted to the Office to comply with section 508 and their presence increases the physical space needed to store the notices.

In late 2013, as part of a pilot project, the Copyright Office started permitting several judicial districts to send AO-121 forms electronically, as attachments to emails.

The Office views this project as a success and has received requests from additional

⁴ See 81 FR 62373 (Sept. 9, 2016) (noting same in mailbox rule for registration reconsiderations),
⁵ *Report on the Filing or Determination of an Action or Appeal Regarding Copyright* (Jun. 2016),
<https://www.uscourts.gov/sites/default/files/ao121.pdf> ("Form AO-121").

districts who wish to submit section 508 notices electronically. The Office believes that allowing all district courts and appellate courts to submit notices to the Office electronically, including through the Case Management/Electronic Case Files system, would simplify the submission process for courts and eliminate some paper record storage for the Office.⁶ Receiving the section 508 notices electronically will also make it easier for the Office to make those forms available for public inspection electronically. Similarly, allowing email submission of section 411(a) notices will benefit the public and the Office as it will ensure quick and easily confirmed delivery of these required notices.

The Copyright Office is publishing this amendment as a final rule without first publishing a notice of proposed rulemaking, as it constitutes a change to a “rule[] of agency . . . procedure, or practice.”⁷ Further, the rule does not “alter the rights or interests of parties,” but merely “alter[s] the manner in which the parties present themselves or their viewpoints to the agency.”⁸ The Office has worked with the Administrative Office of the United States Courts to create procedures for implementing service of these notices via email by the courts and will publicize to the general public the requirement to serve 411(a) notices by email.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 205

Copyright, Courts.

⁶ The Office is working with the Administrative Office of the U.S. Courts to update form AO-121 and notify the court clerks of these new regulations and procedures for submitting notices to the Office.

⁷ 5 U.S.C. 553(b)(A).

⁸ *JEM Broad. Co. v. F.C.C.*, 22 F.3d 320, 326 (D.C. Cir. 1994).

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 205 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend §201.1(c)(1) by:

- a. Adding the words “*Notices and*” before “Requests” in the paragraph heading.
- b. Removing “Notices related to the filing of copyright infringement suits and submitted pursuant to 17 U.S.C. 411(a) and 17 U.S.C. 508; requests pursuant to 17 U.S.C. 411(b)(2) from district courts to the Register of Copyrights, all other” and adding in its place “Other than notices served on the Register of Copyrights submitted pursuant to 17 U.S.C. 411(a), 411(b)(2), and 508, all time sensitive”.
- c. Adding two sentences to the end of the paragraph. d “

The addition reads as follows:

§201.1 Communication with the Copyright Office.

(c)***

(1)*** Notices and requests served on the Register of Copyrights submitted pursuant to 17 U.S.C. 411(a) or 411(b)(2) should be submitted via email in accordance with 37 CFR 205.13 (for section 411(a) notices) and § 205.14 (for section 411(b)(2) notices). Notices served on the Register of Copyrights submitted pursuant to 17 U.S.C. 508 should be submitted via email in accordance with 37 CFR 205.15.

PART 205—LEGAL PROCESS

3. The authority citation for part 205 continues to read as follows:

Authority: 17 U.S.C. 702.

4. Amend §205.13 by:

- a. Removing “registered or certified mail”.
- b. Removing “at the address specified in §201.1(c)(1) of this chapter, or delivery by hand addressed to the General Counsel of the Copyright Office and delivered to the Copyright Information Section, U.S. Copyright Office, Library of Congress, James Madison Memorial Building, Room LM-401, 101 Independence Avenue SE., Washington, DC” and add in its place “to the General Counsel of the Copyright Office via email to 411filings@copyright.gov”.
- c. Adding “, as an attached file,” after “form of a letter”.
- d. Removing “envelope” and add in its place “email’s subject line”.
- e. Adding three sentences after the phrase “Section 411(a) Notice to the Register of Copyrights.” .”

The revisions reads as follows:

§205.13 Complaints served on the Register of Copyrights pursuant to 17 U.S.C. 411(a).

***Attachments must be submitted in Portable Document Format (PDF), assembled in an orderly form, and uploaded as individual electronic files (*i.e.*, not .zip files). Attachments to a single email should be no greater than 20 MB in total. The files must be viewable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and

examination of the file. If submission of a notice via email is not feasible, please contact the Office of the General Counsel by telephone during normal business hours at 202-707-8380.***

5. Add §205.14 to read as follows:

§205.14 Court requests to the Register of Copyrights pursuant to 17 U.S.C. 411(b)(2).

Where there is an allegation that a copyright registration certificate includes inaccurate information with knowledge that it was inaccurate and the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration, pursuant to 17 U.S.C. 411(b)(2), the court shall request the opinion of the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration. The request should be sent to the General Counsel of the Copyright Office via email to 411filings@copyright.gov. Attachments to a single email should be no greater than 20 MB in total. If submission of a request via email is not feasible, please contact the Office of the General Counsel by telephone during normal business hours at 202-707-8380.

6. Add §205.15 to read as follows:

§205.15 Court notices to the Register of Copyrights pursuant to 17 U.S.C. 508.

Pursuant to 17 U.S.C. 508, within one month after the filing of any action under title 17, notice of the names and addresses of the parties and the title, author, and registration number of each work involved in the action, including any other copyrighted work later included by subsequent amendment, answer, or other pleading, must be served by the clerk of the court on the Register of Copyrights. Further, the clerk of the court must

notify the Register within one month after any final order or judgment is issued in the case, sending with the notification a copy of the order or judgment together with the written opinion, if any, of the court. These notices must be sent to the General Counsel of the Copyright Office via email to 508filings@copyright.gov. Notices must include a fully completed PDF version of the Administrative Office of the U.S. Courts' form AO-121, "Report on the Filing or Determination of an Action or Appeal Regarding a Copyright," available at the U.S. Courts' website: <https://www.uscourts.gov/forms/other-forms/report-filing-or-determination-action-or-appeal-regarding-copyright>. If submission of a notice via email is not feasible, please contact the Office of the General Counsel by telephone during normal business hours at 202-707-8380.

Dated: January 14, 2020.

Maria Strong,
*Acting Register of Copyrights and
Director of the U.S. Copyright Office*

Approved by:

Carla D. Hayden,
Librarian of Congress.

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